

**FILED**

APR 11 2022

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY Jms  
DEPUTY CLERKRamon Gutierrez-Perez  
Reg. No. 19646-198  
Federal Correctional Institution  
P.O. Box 800  
Herlong, CA 96113

Note: If represented by an attorney, write attorney's name, address &amp; telephone number

*United States District Court*

EASTERN DISTRICT OF CALIFORNIA

RAMON GUTIERREZ-PEREZ

Full Name (First, Middle, Last)

Petitioner,

vs.

DAVID BREWER

Name of Warden

(or other authorized person having custody of petitioner)

Respondent.

CASE NO.

2:22 - CV 0643 - AC HC

(to be supplied by the Clerk of the  
United States District Court)PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241  
BY A PERSON IN FEDERAL CUSTODY

PLEASE COMPLETE THE FOLLOWING (check the appropriate number):

This petition concerns:

1. \_\_\_\_\_ a conviction
2. \_\_\_\_\_ a sentence
3.   x   jail or prison conditions
4. \_\_\_\_\_ prison discipline
5. \_\_\_\_\_ a parole problem
6. \_\_\_\_\_ other

CAUTION: If you are attacking a federal conviction,  
sentence or judgment, you must  
first file a direct appeal or motion under  
28 U.S.C. § 2255 in the federal court which  
entered judgment.

## PETITION

- (1) Place of detention: Federal Correctional Institution at Herlong, California
- (2) Name and location of court which imposed sentence: U.S. District Court for the Southern District of California (San Diego)
- (3) Offense(s) and indictment number(s) (if known) for the sentence imposed:  
illegal re-entry
- (4) The date the sentence was imposed and the terms of the sentence:  
Sentenced to 57 months on April 12, 2019.
- (5) What was your plea (check one):      Not guilty ( )      Guilty (x)      Nolo contendere ( )
- (6) Kind of trial (check one):      Jury ( )      Judge only (x)
- (7) Did you appeal from the judgment of conviction or the imposition of sentence:    Yes ( )      No (x)
- (8) If you did appeal, answer the following for *each* appeal:

### FIRST APPEAL:

Name of court: Not Applicable

Grounds raised (list each):

1) \_\_\_\_\_

2) \_\_\_\_\_

Result/Date of result: \_\_\_\_\_

### SECOND APPEAL:

Name of court: \_\_\_\_\_

Grounds raised (list each):

1) \_\_\_\_\_

2) \_\_\_\_\_

Result/Date of result: \_\_\_\_\_

## GROUND FOR THIS 28 U.S.C. § 2241 PETITION

- (9) State *CONCISELY* every ground on which you claim that your sentence is being executed in an illegal manner. Summarize *briefly* the *facts* supporting each ground

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

→ **GROUND ONE** Failure to treat serious medical condition

Supporting *FACTS* for *GROUND ONE* (tell your story *BRIEFLY* without citing cases or law).

**CAUTION:** You must state *facts, not conclusions*, in support of your grounds. A rule of thumb to follow is -- who did exactly what to violate your rights at what time or place.

Please see attached pages

→ **GROUND TWO** Not Applicable

Supporting *FACTS* for *GROUND TWO* (tell your story *BRIEFLY* without citing cases or law).

### ADMINISTRATIVE APPEALS

- (10) Have you presented the claims raised in Question #9 of this petition to prison officials in a prison administrations appeal?

Yes (x)      No ( )      If your answer is no, explain why not: \_\_\_\_\_

If your answer is yes, answer the following for *each* administrative appeal:

FIRST ADMINISTRATIVE APPEAL      Level of appeal: Informal - BP8

Grounds raised (list each):

1) Failure to treat serious medical condition

Result/Date of result: No surgery scheduled - November 21, 2021

SECOND ADMINISTRATIVE APPEAL      Level of appeal: Warden - BP9

Grounds raised (list each):

1) Failure to treat serious medical condition

Result/Date of result No surgery scheduled - December 15, 2021

THIRD ADMINISTRATIVE APPEAL

Level of appeal: Regional Office - BP10

Grounds raised (list each):

- 1) Failure to treat serious medical condition

Result/Date of result: Regional Office failed to respond in timely fashion

FOURTH ADMINISTRATIVE APPEAL

Level of appeal: Central Office - BP11

Grounds raised (list each):

- 1) Failure to treat serious medical condition

Result/Date of result: Central Office rejected claim without Regional Office paperwork

- (11) Is the grievance process completed? Yes (x) No ( )

PREVIOUS PETITIONS

- (12) Have you filed previous petitions for habeas corpus under 28 U.S.C. § 2241 or 28 U.S.C. § 2255, or any other applications, petitions or motions with respect to the claims raised in Question #9 of this petition?

Yes ( ) No (x)

- (13) If your answer to Question #12 was yes, give the following information for *each* previous petition:

FIRST PREVIOUS PETITION

Name of court: Not Applicable

Nature of proceeding: \_\_\_\_\_

Grounds raised (list each):

1) \_\_\_\_\_

2) \_\_\_\_\_

Result/Date of result: \_\_\_\_\_

SECOND PREVIOUS PETITION

Name of court: \_\_\_\_\_

Nature of proceeding: \_\_\_\_\_

Grounds raised (list each):

1) \_\_\_\_\_

2) \_\_\_\_\_

Result/Date of result: \_\_\_\_\_

- (14) If the claims raised in Question #9 of this petition concern your conviction or sentence, explain why you are filing your petition pursuant to § 2241 instead of § 2255.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(15) Are you presently represented by counsel?

Yes ( )

No (x)

If so, provide your attorney's name, address, and telephone number:

\_\_\_\_\_  
\_\_\_\_\_

(16) If you are seeking leave to proceed *in forma pauperis*, have you completed the application setting forth the required information?

Yes (x)

No ( )

Note: If your answer is no, you must send a \$5.00 filing fee to the court with your petition.

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WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

04/05/22  
(Date)

REP  
(Signature of Petitioner)

N/A  
(Signature of Attorney, if any)



In March 2019 while in custody as a federal prisoner at a private prison under contract with the Department of Justice (DOJ), Mr. Gutierrez-Perez seriously injured his knee. An MRI was subsequently conducted and it was determined that Mr. Gutierrez-Perez was in need of surgery on his injured knee. He was approved for surgery in February 2020. However, while awaiting this surgery, the private prison was shuttered and Mr. Gutierrez-Perez was transferred. He arrived at FCI Herlong in April 2021. Upon his arrival he informed prison staff about his knee and requested surgery and pain medication to alleviate the pain that he was experiencing.

When the surgery was not forthcoming, Mr. Gutierrez-Perez made numerous requests to the Health Services Department to be treated. He initiated the administrative remedy process on November 12, 2021, filing a BP-8 requesting that surgery be conducted on his knee. The Health Services Department responded on November 21, 2021 and stated that due to the COVID-19 pandemic, appointments, surgeries, and visits to medical specialists had been delayed and backlogged. Because he had been awaiting surgery for two years and was scheduled for release from prison in a few months, Mr. Gutierrez-Perez decided to continue the administrative remedy process so that he could have his injury treated while he was still in BOP custody. On December 1, 2021, Mr. Gutierrez-Perez filed a BP-9 to the warden, stating this facts and that he had not received pain medication. The warden filed a response on December 15, 2021. The warden stated that there wasn't an MRI in Mr. Gutierrez-Perez's medical records and thus one would need to be ordered first before an evaluation could be conducted. The warden also stated that Mr. Gutierrez-Perez had been prescribed Meloxicam. Thereafter, Mr. Gutierrez-Perez filed an appeal to the Western Regional Office on December 20, 2021. In his appeal, Mr. Gutierrez-Perez stated that it was an incorrect statement to say that there was not an MRI in his medical records. Mr. Gutierrez-Perez had a copy of his medical records, in which there was an MRI. Mr. Gutierrez-Perez also stated that the medication that he had been prescribed was ineffective as it did not alleviate the pain that he was experiencing and that it had taken six months just to get that medication (which was prescribed after Mr. Gutierrez-Perez initiated the administrative remedy process).

Per BOP policy, the Regional Office had 30 days to respond to the appeal. However, after not receiving a response from the Regional Office for 60 days, Mr. Gutierrez-Perez continued the administrative remedy process by filing a BP-11 with the Central Office on February 17, 2022. The Central Office contacted the Regional Office and instructed it to respond to Mr. Gutierrez-Perez's BP-10. On February 23, 2022, the Regional Office filed a request for an extension of time to file a response; until April 15, 2022; which was four months after the date that Mr. Gutierrez-Perez originally filed the appeal and far beyond the deadline date for responding to an appeal, per BOP policy. The Central Office rejected Mr. Gutierrez-Perez's appeal and stated that he should re-submit it once the Regional Office had responded to his BP-10.

Mr. Gutierrez-Perez contends that he has exhausted the administrative remedy process. He has filed that proper paperwork at each stage in the administrative process and has done so in a timely manner. The Bureau of Prisons, however, has substantially delayed the process. For instance, the Regional Office had 30 days to respond to his appeal, yet more than 60 days elapsed before it even sought an extension of time; extending its response time to 4 months, and only responding after being instructed to do so by the Central Office.

This delaying tactic has significantly impacted Mr. Gutierrez-Perez's ability to litigate his claim. At present, Mr. Gutierrez-Perez's projected release date is August 26, 2022. Upon his release from federal prison, he will be deported to Mexico. Mr. Gutierrez-Perez contends that the BOP has delayed his treatment in an effort to release him without having to cover the pay the cost of his medical injury, an injury sustained while he was in the custody of the BOP. For that reason, Mr. Gutierrez-Perez seeks as

relief either an order directing the BOP to have the surgery done prior to Mr. Gutierrez-Perez's release date or an order directing the BOP to cover the medical expense for the surgery after Mr. Gutierrez-Perez is released from federal prison.



HER 1330.13A  
September 19, 2005  
ATTACHMENT A

### INFORMAL RESOLUTION

An inmate with a valid complaint should complete the first three sections below and submit the form to his/her respective Correctional Counselor.

1. Ramon Gutierrez-Perez 1964b-198 Sierra-A 11/18/2021  
INMATE NAME REG. NO. UNIT DATE

2. Nature of complaint (briefly state your problem): I was previously approved for surgery on my knee, in February 2020. However, I was transferred to FCI Herlong before surgery. I am asking that the surgery be done as soon as possible. Thank you.

3. Inmate's efforts to resolve problem (includes contact with staff, Inmate Requests to Staff Member submissions, etc.): I have gone to sick call and filed Inmate Request to Staff Member (cop-outs) with the Health Department. But no surgery has been scheduled.

4. Steps taken /advice given to inmate regarding complaint: YOU ARRIVED AT FCI HERLONG ON 4/16/21. DUE TO THE COVID-19 PANDEMIC, APPOINTMENTS, SPECIALISTS, AND SURGERIES HAVE BEEN DELAYED AND BACKLOGGED. YOUR ISSUE IS BEING REVIEWED IN THE ORDER IN WHICH IT WAS RECEIVED.

5. Informal Resolution WAS/WAS NOT accomplished (Circle One).

[Signature]  
Correctional Counselor

[Signature]  
Unit Manager

11/21/21  
Date

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons

# REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Perez, Ramon Gutierrez 19646-198 Sierra-A FCI Herlong  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST I injured my knee in March 2019 while at a BOP contract prison. I was approved for surgery in February 2020. However, I was transferred to FCI Herlong in April 2021, before I received the surgery. Since my arrival at FCI Herlong I have made numerous requests for surgery and pain medication. Yet, for the past six months or so I have not been prescribed any pain medication. Moreover, in response to my BP-8, the Health Service Dept. stated that my "issue is being reviewed." But I have been waiting more than 2 years - nearly 3 years - to have my knee properly treated. Therefore, I ask that I be provided pain medication and scheduled for surgery immediately. Thank you.

12-1-2021  
DATE

REP  
SIGNATURE OF REQUESTER

## Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 1103689-F1

Part C- RECEIPT

CASE NUMBER: \_\_\_\_\_

U.S. Department of Justice  
Federal Bureau of Prisons  
FCI Herlong

Request for Administrative Remedy  
Part B - Response

Admin. Remedy Number: 1103689-F1

This is in response to your Request for Administrative Remedy dated December 1, 2021, wherein you declare you were transferred to FCI Herlong before you could receive surgery of your knee approved in February of 2020 by a BOP contract facility. You declare you have not received surgery or pain medications after being at FCI Herlong for six or so months. For relief, you are requesting your knee be properly treated, that pain medication be provided and request surgery immediately.

An investigation into this matter reveals that our records indicate you do not currently have an MRI in your medical records. In order for a consultation be to be placed for you to be seen by an outside Orthopedic Surgeon, we must first obtain an MRI for them to review at the time of your consult. Therefore, we have ordered an MRI of the right knee for which you will be scheduled. Additionally, you are currently prescribed Meloxicam, a medication, to treat and reduce your pain. If you find this medication is no longer therapeutic, you may discuss treatment options with your primary chronic care physician or be evaluated through the sick call process.

Based on the above, your request for Administrative Remedy is denied.

If you are dissatisfied with this response, you may appeal to the Western Regional Director. Your appeal must be received by the Regional Administrative Remedy Coordinator, Federal Bureau of Prisons, Western Regional Office, 7338 Shoreline Dr., Stockton, California, 95219, within twenty (20) calendar days from the date of this response.

  
\_\_\_\_\_  
Paul Thompson, Warden

12/15/2021  
\_\_\_\_\_  
Date



## Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-229(13) including any attachments must be submitted with this appeal.

From: Perez, Ramon Gutierrez 19646-198 Sierra-A FCI Herlong  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL This is an appeal from the denial of my BP-9. In his response the warden alleged that my file does not have an MRI. However, this is incorrect as I received an MRI in February 2020 before I was approved for surgery. As I noted in my BP-9 I have been waiting for two years to get this surgery and need it done before I am released from prison. Also, the warden states that I am getting medication (Meloxicam). First, the Health Service Department did not prescribe this medication for six months. It was only after I filed my BP-8 that they gave me this medication. Second, as I have told the medical staff, this medication does not alleviate my pain. I need stronger medication while I await surgery. Therefore, I ask that you please immediately schedule me for knee surgery.

12/20/2021

DATE

RAMON GUTIERREZ, PEREZ

SIGNATURE OF REQUESTER

## Part B - RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: \_\_\_\_\_

## Part C - RECEIPT

CASE NUMBER: \_\_\_\_\_

Return to: \_\_\_\_\_  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: \_\_\_\_\_

DATE

SIGNATURE OF REGIONAL DIRECTOR

ISSUED  
2/17/22  
(A)

U.S. Department of Justice

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: Perez, Ramon Gutierrez 19646-198 Sierra-A FBI Harlong  
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

## Part A - REASON FOR APPEAL

On December 20, 2021 I sent an appeal to the Western Regional Office with regards to my need to receive surgery on my knee and the inefficacy of the medication I was prescribed. More than 30 days have elapsed and I have received no response from the regional office. As such I am continuing the administrative remedy process. I ask that you please schedule me for immediate knee surgery.

2/17/2022  
DATE

RAMON GUTIERREZ PEREZ  
SIGNATURE OF REQUESTER

## Part B - RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: \_\_\_\_\_

## Part C - RECEIPT

CASE NUMBER: \_\_\_\_\_

Return to: \_\_\_\_\_  
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: \_\_\_\_\_

DATE

SIGNATURE OF REQUESTER